Ralston Purina Company[1] ***and*** **American Federation of Grain Millers, Local No. 16, AFL-CIO.** Case 17-CA-9676

August 6, 1981

DECISION AND ORDER

On January 30, 1981, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,[2] and counsel for the General Counsel filed a brief in support of the Administrative Law Judge's Decision, as well as an opposition to Respondent's request for oral argument.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[3] and conclusions of the Administrative Law Judge, as further explained herein, and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found, and we agree, that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, by issuing letters of reprimand to employees Wayne Heckenlively and Danny Walenta because they engaged in protected concerted activity. Although we find Respondent's exceptions to be without merit, we nonetheless are of the opinion that some augmentation of the Administrative Law Judge's analysis is warranted.

Danny Walenta and Wayne Heckenlively are employed in Respondent's maintenance department, and were supervised by Meyer Sollenberger. As a result of a reprimand given Walenta,[4] which was perceived by Walenta and Respondent's other maintenance employees to be unjustified, and because of the great number of grievances[5] (approximately 50) filed during the few weeks that Sollenberger had been supervising the maintenance department, Edward Hobson, the maintenance steward, recommended that the maintenance employees prepare a petition on this matter for submission to management. Heckenlively thereupon prepared and signed such a petition,[6] and the other maintenance employees, including Walenta, signed the petition the next day.[7] Immediately after the petition was signed, Heckenlively turned the petition over to Hobson, who then presented it to Sollenberger at or about 7 a.m. on March 18, 1980, and some 3 hours later, to Wendell Spracklen, plant engineer and Sollenberger's supervisor.

That afternoon, Sollenberger asked Heckenlively to remain after the 3:30 p.m. quitting time to weld a bolt in a pellet mill.[8] Heckenlively declined the request, noting that three less senior welders were available to do the job.[9] Sollenberger, however, insisted that Heckenlively do the welding. The record reflects that, three times during the course of this conversation, Heckenlively requested the presence of Steward Hobson, and that Sollenberger ignored Heckenlively's requests. Heckenlively thereupon left Sollenberger in order to find Hobson, who worked approximately 200 feet away in another part of the facility. Heckenlively and Hobson then proceeded to Spracklen's office, where they discussed the problem with both Spracklen and Sollenberger, Heckenlively and Hobson taking the position that only "a common welding job" was at issue, while Spracklen and Sollenberger claimed that the job required the high level of expertise possessed by Heckenlively. During this conversation, Hobson also noted that Sollenberger had failed to notify him as required by the collective-bargaining agreement, and reminded Spracklen and Sollenberger that this re-

[1] Although Respondent's name in the complaint appears as Ralston Purina, Inc., and while no formal motion to amend has been filed, the record reflects that the correct name of Respondent is as appears above.

[2] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[3] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[4] On Saturday, March 15, 1980, at or about 3 p.m., Waltenta returned to his locker to get some needed tools for a remaining task which, according to Walenta, would require only 2 or 3 minutes to complete. Walenta's quitting time was 3:30 p.m. Before returning to the motor control room—a nonsmoking area—Walenta lit a cigarette. Supervisor Sollenberger, who entered the locker area, asked Walenta about the progress of the job. Walenta informed Sollenberger of the short duration of the remaining task. Sollenberger directed Walenta to "get with it," to which Walenta replied that he wished to finish his cigarette. This exchange was repeated, after which Sollenberger suggested that Walenta "punch out" if he was unwilling to work. When Walenta refused to do so, Sollenberger stated that he would punch out for Walenta, and did so. Walenta thereupon left the plant.

[5] The grievances were filed pursuant to a collective-bargaining agreement between Respondent and the Union.

[6] The petition read:

> We the undersigned do hereby wish to bring charges against Meyer Sollenberger, the Maint. Foreman at the Kansas City Chow Division of Ralston Purina.
>
> The charges are covered in section 8A1 and A3 of the National Labor Relations Act of unfair and unsafe practices.

[7] Walenta was sent home on Saturday, March 15; the decision to draft a petition occurred on March 17; and the employees signed the petition on Tuesday morning, March 18, 1980.

[8] The flawed bolt reduced the facility's pelleting capacity by one-fourth.

[9] The existing collective-bargaining agreement provided that the most senior employees have the right of first refusal with respect to tasks requiring overtime, subject to Respondent's right, "in the event special skills are required," to designate a particular person regardless of seniority, provided that the steward is first notified.

quirement had recently been reaffirmed during a prior grievance proceeding involving Heckenlively. The situation was resolved, however, with Heckenlively agreeing to do the work, but retaining the option of filing a grievance thereafter.

After finishing the welding job, Heckenlively prepared three grievances,[10] which Hobson presented to Spracklen and Sollenberger early the next morning—March 19. As more fully described by the Administrative Law Judge, Heckenlively was summoned to Spracklen's office, coincident with Hobson's presentation of Heckenlively's grievances, and was given a reprimand letter dated March 19, 1980.[11] Subsequent to Heckenlively's departure from Spracklen's office, Walenta was summoned and given a letter of reprimand dated March 18, 1980.[12]

1. Although we are in agreement with the Administrative Law Judge's conclusion that the employee activity surrounding the preparation, execution, and delivery of the petition constitutes protected concerted activity, we are of the opinion that further discussion is warranted concerning the basis for that finding.

As found by the Administrative Law Judge, and as reflected by the record, the employee petition was grounded, at least in part, on Sollenberger's confrontation with Walenta, and the large number of previously filed grievances citing Sollenberger. Respondent, however, maintains in substance that, while the activity surrounding the preparation and circulation of the employee petition may have been concerted, it was not protected, and relies, *inter alia*, on *Joanna Cotton Mills Co.* v. *N.L.R.B.*[13] in support of its position.

We disagree, however, and find its citation of *Joanna Cotton Mills* inapposite to the case now before us. In that case, the court characterized as a personal vendetta a petition prepared and circulated by a single employee, which called for the removal of a foreman who had reprimanded that employee for maintaining a gambling operation on the employer's premises. In contrast, the case herein involves a petition prepared and circulated with full union support, and catalyzed, at least in part, by the actions of a supervisor arguably acting in derogation of an existing collective-bargaining agreement, and which was clearly related, *in toto*, to working conditions at Respondent's facility.[14] Indeed, the Board has specifically held that the quality of supervision is a legitimate concern of employees.[15]

A case with particular application to the facts herein is *Dreis & Krump Manufacturing Company* v. *N.L.R.B., supra*, wherein employee Mayer received a written warning for carelessness, which he then grieved through the contractual dispute-settling procedure, claiming that "although [Supervisor] Mirabella walked past him several times and observed his difficulty in setting up the machine properly, the foreman offered neither aid nor instruction."[16] Mayer, however, in addition to his grievance, also chose to publicize his dissatisfaction with Mirabella, and to enlist the support of other employees.[17] The employer therein argued, *inter*

[10] Two grievances prepared by Heckenlively cited Sollenberger for forcing him to remain at work past quitting time and for not allowing him to contact a steward. The third grievance cited Spracklen for forcing Heckenlively to remain at work past quitting time.

[11] Heckenlively's written reprimand read as follows:

> Wayne, on Tuesday, March 18, 1980, I requested that you stay and repair a pellet mill.
>
> Instead of performing this task when asked, you left the area without permission. Although you returned to this task 20 minutes later, leaving the area of your job is a direct violation of written plant rules. You were also grossly insubordinate in refusing to perform this work when it was assigned to you.
>
> This is a letter warning you that any further violations will result in additional disciplinary action.

[12] Walenta's written reprimand read as follows:

> Danny, this is to confirm our conversation and actions on Saturday, March 15, 1980.
>
> You were in the shop smoking when you should have been working on the South Unit Cooler. You had already had your afternoon break. I asked you to go back to work, and you said you would after you finished your cigarette. I told you to go back to work or punch out. You said, "after I finish my cigarette"—at this time, I punched your card and sent you home.
>
> Danny, this is a gross violation of Company Policy on breaks. You also refused to put out your cigarette and go back to work as I requested.
>
> This was gross insubordination on your part, and any further acts of this nature will bring further disciplinary action.

[13] 176 F.2d 749 (4th Cir. 1949), setting aside 81 NLRB 1398 (1949).

[14] See, for example, *Dreis & Krump Manufacturing Company, Inc.* v. *N.L.R.B.*, 544 F.2d 320 (7th Cir. 1976), enfg. 221 NLRB 309 (1975), for a discussion of the relationship of *Joanna Cotton Mills* to a set of circumstances similar to the ones herein.

[15] *Hitchiner Manufacturing Co., Inc.*, 238 NLRB 1253, 1257 (1979).

Although the Administrative Law Judge cited *American Art Clay Company, Inc.* v. *N.L.R.B.*, 328 F.2d 88, 90 (7th Cir. 1964), denying enforcement 142 NLRB 624 (1963), in support of the proposition that "it is difficult to imagine a case in which the . . . capabilities of a supervisor cannot be said to have a direct impact on the employees' job interests and work performance" (ALJD, fn. 5), we note that the above language is quoted out of context. The thrust of the court's decision, which denied enforcement of the Board's order, was that employees who engage in a walkout because of dissatisfaction over a change in supervision are not protected by the Act and are subject to discharge. Thus, the court did not focus solely on the subject of the employees' concerns, but also on the manner in which they made their concerns known to management. In this regard, the court specifically distinguished a walkout or work stoppage, which is not involved in the instant case, from such moderate conduct as drafting a letter, which is essentially the activity the employees engaged in here.

[16] 544 F.2d at 323.

[17] Mayer's leaflet read as follows:

> ATTENTION ALL WORKERS
>
> This case of J. Mayer v. J. Mirabella concerns ALL workers. We must not think that Mirabella is just peculiar. The Company knows that Mirabella does and supports him and all other foremen who act like him. WE DON'T HAVE TO TAKE IT!!! [*Id.* at 324.]

alia, that the leaflet disparaged the contractual grievance procedure on its face, since the printed material made no specific reference to the progress of Mayer's grievance, or that similarly situated employees might invoke the grievance machinery in their own behalf. The court, however, affirmed the Board's holding that Mayer's leafletting activity "served to complement, rather than circumvent, the established grievance procedure." *Id.* at 321. Like *Dreis & Krump*, we hold that the employee petition herein complemented the contractual grievance procedure and typifies the kind of employee concerted action clearly contemplated by Section 7 of the Act. Thus, it is manifestly clear that the employees, far from eschewing the collective-bargaining agreement and the dispute-settling mechanism therein, had overwhelmingly embraced that grievance procedure as the means of choice in hopes of resolving an obviously ongoing, and apparently intractable, dispute with Supervisor Sollenberger. Seemingly frustrated in their efforts, however, the employees, on the advice of their union steward, chose to employ another means to bring their problem to the attention of management by submitting the petition. In addition, the employees herein, in the course of preparing, signing, and submitting the petition to management, in no way interfered with the ongoing work at Respondent's facility.

Accordingly, and based on all of the above, we reaffirm the Administrative Law Judge's finding that the activities surrounding the employee petition were concerted and protected within the meaning of the Act. We also agree with the Administrative Law Judge, for the reasons stated by him, that Walenta was disciplined for engaging in that protected concerted activity and not for the incident cited in the reprimand letter.

2. With respect to Heckenlively, the Administrative Law Judge found that the reprimand letter, which characterized Heckenlively's conduct as "insubordination," and "leaving his [work] area," in fact "consisted of his asserting his right under the labor agreement to refuse an overtime assignment, absent certain preconditions which had not been satisfied, and his summoning the steward to assist in the resolution of the problem. Both the assertion of a contract right and the summoning of the steward were protected activities. Thus, even if this conduct truly had given rise to Heckenlively's letter, instead of being grasped as a pretext to chasten him for his part in the petition, the letter was improper." (ALJD, sec. III, B.)

We agree with the Administrative Law Judge's conclusion that the reprimand letter was unlawful on the ground that on its face it was based on conduct protected by the Act. We therefore find it unnecessary to rely on the Administrative Law Judge's other rationale. Thus, Heckenlively's reprimand letter reflects that his discipline was triggered by his questioning Supervisor Sollenberger's judgment that only Heckenlively could perform the overtime work in question, and because he insisted on the presence of a steward when it became clear that he and Sollenberger would be unable to resolve the dispute on their own. However, as set forth above, the collective-bargaining agreement provided that a senior welder such as Heckenlively had the right to refuse overtime, subject to Respondent's right, "in the event special skills are required," to designate a particular person regardless of seniority so long as the steward is first notified, a requirement with which Sollenberger had not complied.[18]

The Board has held that an attempt by an employee to enforce or uphold the provisions of an existing collective-bargaining agreement, by the filing of grievance or otherwise, is protected by Section 7 of the Act. Any reprisal taken by an employer, based on such employee activity, is therefore violative of Section 8(a)(1) of the Act.[19] Like the employee in *John Sexton*, Heckenlively, by insisting on the presence of a steward, failing to get any response thereto from Respondent's supervisor, and then leaving Sollenberger in order to contact the steward on his own, attempted, in accordance with past practice, to enforce the contractual provision regarding the assignment of overtime.[20] It is

[18] As discussed above, Steward Hobson testified that a prior grievance matter, also involving Heckenlively, had reaffirmed the principle that the steward was to be notified before Respondent made any overtime assignment under the contract provision involved here. In addition, as noted by the Administrative Law Judge, the record reflects that it was common practice at Respondent's facility for employees to leave their respective work areas to contact a steward. Thus, Steward Hobson testified that, in a 10-week period, from January until mid-March 1980, employees, seeking Hobson's assistance as a result of a dispute with a supervisor, left their respective work areas on approximately a dozen occasions and were not reprimanded therefor.

[19] See, for example, *John Sexton & Co., a Division of Beatrice Food Co.*, 217 NLRB 80 (1975), wherein the Board adopted the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(1) and (3) of the Act when it discharged employee Knuth for filing grievances under the collective-bargaining agreement. The General Counsel in the case additionally contended that Knuth was also discharged because, in refusing to drive with a suspended driver's license, he was attempting to implement a contract provision which stated that drivers could refuse to drive where driving would be in violation of any applicable statute; and that his discharge for this reason constituted a separate violation of Sec. 8(a)(1) of the Act. The Board agreed, stating that it has "consistently held that Section 7 of the Act protects employees' attempts, such as Knuth's, to implement the terms of bargaining agreements irrespective of whether the asserted contract claims are ultimately found meritorious and regardless of whether the employees expressly refer to applicable contracts in support of their actions or, indeed, are even aware of the existence of such agreements." (*Id.* at 80.)

[20] By contrast, the employees in *Bechtel Incorporated*, 248 NLRB 1222 (1980), disagreeing with the employer's established work rules, and seek-

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thus clear that Heckenlively's reprimand for leaving the area "without permission," and for his "grossly insubordinate" refusal to perform the overtime work in question, is, on its face, violative of Section 8(a)(1) of the Act.

Accordingly, and based on all the above, we find that Respondent, by issuing letters of reprimand to employees Walenta and Heckenlively, violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Ralston Purina Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. American Federation of Grain Millers, Local No. 16, AFL-CIO, is a labor organization within meaning of Section 2(5) of the Act.

3. By reprimanding employees Danny Walenta and Wayne Heckenlively because they engaged in protected concerted activities, Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Ralston Purina Company, Kansas City, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Issuing letters of reprimand to, or otherwise discriminating against, employees because they have engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

2. Substitute the following for paragraph 2(a):

"(a) Rescind the letters of reprimand issued to Danny Walenta and Wayne Heckenlively on March 19, 1980, remove said letters of reprimand from their respective personnel files, and notify them in writing that this has been done."

3. Substitute the attached notice for that of the Administrative Law Judge.

ing to implement their own terms and conditions of employment, explicitly rejected the grievance procedure sanctioned by the applicable collective-bargaining agreements, and engaged in deliberate and repeated refusals to comply with the work rules in question. The Board found such conduct outside the protection of the Act.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT issue letters of reprimand to, or otherwise discriminate against, employees because they have engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed under the Act.

WE WILL rescind the letters of reprimand issued to Danny Walenta and Wayne Heckenlively on March 19, 1980, remove said letters of reprimand from their respective personnel files, and notify them in writing that this has been done.

RALSTON PURINA COMPANY

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Kansas City, Missouri, on December 4, 1980. The charge was filed on May 19, 1980, and amended on June 26, by American Federation of Grain Millers, Local No. 16, AFL-CIO (the Union). The complaint issued on July 2, and alleges that Ralston Purina Company (Respondent), by its issuance of reprimand letters to Wayne Heckenlively and Danny Walenta in March 1980, violated Section 8(a) (1) of the National Labor Relations Act (the Act).

I. JURISDICTION

Respondent is a Missouri corporation, headquartered in St. Louis, engaged in the production and distribution of animal feeds. It annually ships products of a value exceeding $50,000 across state lines, and thus is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Evidence*

Heckenlively, a sheet metal man, and Walenta, an electrician, are among about 10 employees in the maintenance department of Respondent's feed manufacturing (chow) operation in Kansas City, Missouri. They are covered by a labor agreement between Respondent and the Union. Their union steward is Edward Hobson, a maintenance employee in Respondent's adjacent soybean crushing facility.

On Saturday, March 15, 1980, at or about 3 p.m., Walenta went to his locker to put away unneeded tools and obtain others for a remaining task. The remaining task involved the removal of a jog switch in the motor control room and, by Walenta's reckoning, would take about 2-1/2 minutes. His shift was to end at 3:30.

Before undertaking the final task, Walenta lit a cigarette. This necessitated that he remain in the locker area, the motor control room being a nonsmoking area. Meyer Sollenberger, maintenance supervisor, presently asked Walenta how the job was going. Walenta answered that only the removal of the jog switch remained, to which Sollenberger remarked: "Well, let's get with it." Walenta said that he wished to finish his cigarette, and Sollenberger again directed that he "get with it." Walenta repeated that he wished to finish his cigarette. Sollenberger suggested that he "punch out" if he were unwilling to work, and Walenta responded that he would not punch out. Sollenberger announced that he would punch out for Walenta, and did just that. Walenta thereupon left the plant.

March 17, 2 days later, seemingly because of broad displeasure with Sollenberger among the maintenance employees and an attendant high number of grievances—about 50—coming out of the maintenance department of the chow operation in the preceding few weeks,[1] Hobson, the steward, recommended that the maintenance employees prepare a petition for submission to management. Heckenlively prepared and signed such a petition that night, and the balance of the maintenance employees, Walenta among them, signed it before work the morning of the 18th. The petition read:

> We the undersigned do hereby wish to bring charges against Meyer Sollenberger, the Maint. Foreman at the Kansas City Chow Division of Ralston Purina.
>
> The charges are covered in section 8A1 and A3 of the National Labor Relations Act of unfair and unsafe practices.

After all had signed, Heckenlively turned the petition over to Hobson, who in turn presented it to Sollenberger at or about 7 a.m. on March 18 and to Wendell Spracklen, plant engineer and Sollenberger's supervisor, at or about 10.[2] Sollenberger responded that he could not sign the document, as he would a grievance, without talking to his superiors; and Spracklen declined to sign on the stated ground that it was not a legal grievance.

Also on March 18, Walenta submitted a grievance against Sollenberger, contending that it was unlawful for him to have punched Walenta's timecard on March 15. Hobson presented the grievance to Sollenberger the morning of March 18.

On March 18 at or about 3:15 p.m., Sollenberger asked Heckenlively to stay past the 3:30 quitting time to weld a broken main bolt in a pellet mill. Because of the broken bolt, one-fourth of the facility's pelleting capacity was nonfunctional. Heckenlively objected, stating that he wanted to go home at the scheduled time and that three less senior welders were available. According to the labor agreement, those most senior have the right of first refusal as concerns the assignment of tasks requiring overtime, subject to management's right, "in the event special skills are required," to designate a given person regardless of seniority so long as the steward is first notified.

Sollenberger persisted that he wanted the bolt to be welded by Heckenlively, and Heckenlively adhered to his original position. Three times during the exchange, Heckenlively asked that Hobson be present to hear out the dispute. Sollenberger ignored these requests. Heckenlively finally left to get Hobson, who worked about 200 feet away in another building.

Returning with Hobson, Heckenlively went to Spracklen's office, after which the three of them and Sollenberger discussed the situation. Spracklen and Sollenberger contended that the emergent nature of the problem called for Heckenlively's high level of welding expertise, entitling Respondent to designate him to do the job. Hobson countered that only "a common welding job" was in issue, and that any number of people could do it adquately. Hobson added that, in any case, Respondent had failed to notify him before making a specific designation, as is required by the agreement, and cited a recent grievance matter, also involving Heckenlively, in which that principle had been reaffirmed.[3] Spracklen responded that Heckenlively should do the work as directed, then file a grievance if he felt that the agreement had been violated. The meeting concluded with Heckenlively agreeing to do the work. The task took him about 40 minutes.

That night, Heckenlively prepared three grievances. Two were against Sollenberger, for forcing him to stay past quitting time and for not allowing him to get a steward; and one was against Spracklen, for forcing him to stay past quitting time. Early the next morning, coincident with Hobson's presentation of the Heckenlively grievances to Spracklen and Sollenberger, Heckenlively was summoned to Spracklen's office and given one of

[1] Sollenberger became maintenance supervisor on or about February 1, 1980.

[2] Spracklen testified that Hobson told him of the petition on the morning of March 18, but did not present it to him. Hobson testified, on the other hand, that he did show the document to Spracklen. Hobson is credited. Not only is his version more plausible, but his testimony on the point was otherwise more convincing.

[3] This grievance had been prepared by Heckenlively on January 12, 1980, and complained that he had been required to work 5 hours of overtime while a more junior employee, capable of doing the work, was allowed to leave at shift's end. The grievance was resolved in Heckenlively's favor in early March.

the reprimand letters in question. The letter, dated March 19 and signed by Sollenberger, read:

> Wayne, on Tuesday, March 18, 1980, I requested that you stay and repair a pellet mill.
>
> Instead of performing this task when asked, you left the area without permission. Although you returned to this task 20 minutes later, leaving the area of your job is a direct violation of written plant rules. You were also grossly insubordinate in refusing to perform this work when it was assigned to you.
>
> This is a letter warning you that any further violations will result in additional disciplinary action.

Heckenlively left promptly and with little discussion upon receiving his letter, whereupon Walenta was called in and given the other letter in question. The letter, dated March 18 and also signed by Sollenberger, read:

> Danny, this is to confirm our conversation and actions on Saturday, March 15, 1980.
>
> You were in the shop smoking when you should have been working on the South Unit Cooler. You had already had your afternoon break. I asked you to go back to work, and you said you would after you finished your cigarette. I told you to go back to work or punch out. You said, "after I finish my cigarette"—at this time, I punched your card and sent you home.
>
> Danny, this is a gross violation of Company Policy on breaks. You also refused to put out your cigarette and go back to work as I requested.
>
> This was gross insubordination on your part, and any further acts of this nature will bring further disciplinary action.

Walenta, like Heckenlively, left promptly and with little discussion upon receiving his letter.

Ben Bowman, production manager, testified that the decisions to issue the letters were his. As concerns Walenta, he elaborated that Sollenberger and Spracklen reported the smoking incident of March 15 to him on the morning of Monday, March 17, and that he then decided that a reprimand was in order. He professedly told Sollenberger at the time that the situation was one "of insubordination and we cannot tolerate it and there is no choice but to give Danny a disciplinary letter following the clock out."

Bowman continued that Sollenberger composed a longhand draft of the Walenta letter on the afternoon of March 17, that Bowman gave his approval of the draft that same afternoon, and that it then went to Bowman's secretary for typing. Bowman testified that he saw the letter in final, typed form "probably sometime" in the afternoon of March 18. As if to explain why the letter was not typed on March 17, Bowman testified that the time of his secretary is taken up with timecard preparation and payroll matters each Monday.

Regarding the decision to reprimand Heckenlively, Bowman testified that Sollenberger and Spracklen reported the dispute over the welding assignment to him, the implication being that this took place the morning of March 19,[4] and that he decided upon the letter because the loss of pelletizing capacity occasioned by the broken bolt had created an "emergency," which was "not the time to be looking for shop stewards or discussing and arguing about who is going to perform the job."

Bowman testified that the employee petition had nothing to do with his reprimand decisions; indeed, that he did not so much as learn of it until sometime in April.

Although Bowman testified that a number of letters of reprimand have issued in recent years, Respondent brought to the courtroom only one for the time from January 1, 1978, to March 19, 1980. Bowman testified that he considers a reprimand letter to be a "very serious" sanction.

The weight of evidence indicates that the maintenance employees regularly left their work areas to see the steward without incurring detriment with management.

B. *Conclusions*

It is concluded that the issuance of the letters violated Section 8(a)(1) as alleged. This conclusion is based on these considerations:

1. Several circumstances surrounding their issuance suggest that the employee petition complaining about Sollenberger, following the extraordinary number of grievances he had provoked, caused Respondent to fear a loss of management control, motivating it to seize any convenient pretext to punish those participating in the petition.

Moreover, since Sollenberger and Spracklen promptly informed Bowman, the decisionmaker, of the March 15 Walenta and the March 18 Heckenlively incidents, it defies belief that they would not have told him promptly, on March 18, about something so serious as the petition. Bowman's testimony that he did not learn of the petition until weeks later therefore is discredited; and it is inferable from his perceived need to fabricate in this regard that the petition indeed was a central factor in the issuance of the letters.

The employee activities surrounding the preparation of the petition plainly were protected,[5] as were the activities underlying the preceding glut of grievances.

2. Although Bowman learned of the March 15 Walenta incident early on March 17, and reputedly then remarked that Walenta had been intolerably insubordinate and should receive a disciplinary letter "following the clock out," Walenta's letter was dated March 18 and was not given to him until March 19. Meanwhile Respondent learned of the petition and of Walenta's grievance over the March 15 incident on March 18. The inference thus is pungent that these intervening events were the true triggers behind the Walenta letter, particularly since Bowman's explanation for the delay in its typing was devoid of conviction.

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[4] Spracklen testified that he reported the incident to Bowman the morning of March 19.

[5] "[I]t is difficult to imagine a case in which the capabilities of a supervisor cannot be said to have a direct impact on the employees' job interests and work performance." *American Art Clay Company, Inc.* v. *N.L.R.B.*, 328 F.2d 88, 90 (7th Cir. 1964).

3. Further as concerns Walenta, the incident cited in his letter bespoke minimal misconduct, without potential to impair job completion, and Respondent has shown no precedent for letters of this sort when misconduct of so slight a moment is involved.

4. Further as concerns Heckenlively, the conduct cited in his letter, while couched in terms of insubordination and leaving his area, in fact consisted of his asserting his right under the labor agreement to refuse an overtime assignment, absent certain preconditions which had not been satisfied, and his summoning the steward to assist in the resolution of the problem. Both the assertion of a contract right and the summoning of the steward were protected activities.[6] Thus, even if this conduct truly had given rise to Heckenlively's letter, instead of being grasped as a pretext to chasten him for his part in the petition, the letter was improper.

Upon the foregoing findings of fact and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[7]

The Respondent, Ralston Purina Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Issuing letters of reprimand to or otherwise discriminating against employees for engaging in activities protected by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in their exercise of rights under the Act.

2. Take this affirmative action:

(a) Rescind the letters of reprimand issued to Wayne Heckenlively and Danny Walenta on March 19, 1980, and notify them in writing that this has been done.

(b) Post at its plant in Kansas City, Missouri, the notice which is attached and marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[6] "[T]he implementation of such [a labor] agreement by an employee is but an extension of the concerted activity giving rise to that agreement." *Merlyn Bunney and Clarence Bunney, Partners, d/b/a Bunney Bros. Construction Company*, 139 NLRB 1516, 1519 (1962). Granted, the protection afforded such conduct by "the Act is not absolute." *Bechtel Incorporated*, 248 NLRB 1222, 1223 (1980). The employee conduct found to be unprotected in Bechtel was appreciably more aggravated than Heckenlively's, however.

[7] All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."